

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.:

JESUS GONZALEZ

Plaintiff,

v.

HERC RENTALS, INC, and
JOSE J. MONTES, LE

Defendants.

/

COMPLAINT FOR INJUNCTIVE RELIEF

Plaintiff, Jesus Gonzalez, by and through the undersigned counsel, hereby sues Defendants, Herc Rentals, Inc., and Jose J. Montes, LE, for injunctive relief pursuant to 42 U.S.C. §§12181-12189 of the Americans with Disabilities Act (“ADA”) and 28 C.F.R. Part 36 and alleges:

1. This is an action for declaratory and injunctive relief pursuant to Title III of the Americans with Disabilities Act (“ADA”) 42 U.S.C. §§12181-12189. This Court is vested with original jurisdiction under 28 U.S.C. §1331.

2. Venue is proper in the Court, pursuant to 28 U.S.C. §1391(b) in that all events giving rise to this lawsuit occurred within the Southern District of Florida and the subject premises is located within the jurisdiction of this Court.

3. Plaintiff, Jesus Gonzalez (“Plaintiff”) is an individual with disabilities as defined by the ADA, and a resident of Miami-Dade County, Florida, and otherwise *sui juris*.

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4. Defendants are authorized to conduct, and are conducting, business within the State of Florida and within the jurisdiction of this court.

PARTIES

5. Plaintiff, Jesus Gonzalez (“Plaintiff”) is a resident of the state of Florida. Plaintiff has a “qualified disability” under the ADA as he is disabled with neuropathy and nerve damage due to radiation and utilizes a wheelchair for mobility. Plaintiff’s disability is defined in 42 U.S.C. §12102(1)(A)(2), 28 C.F.R. §36.105(b)(2) and 28 C.F.R. §36.105(2)(iii)(D).

6. Plaintiff is also an advocate of the rights of similarly situated disabled persons, and a “tester” for the purpose of asserting his civil right, and to determine whether public accommodations are in compliance with the ADA/ADAAG.

7. Defendant, Herc Rentals, Inc, is a Foreign for-profit corporation, a full-service equipment rental company serving a diverse range of industries branded “Herc Rentals”, with more than 400 company-operated branches in the United States and Canada, including their rental location 9910–West Miami, FL, at 7044 SW 8th Street, Miami, Florida 33144, the subject to this action and referred hereto as “Herc Rentals” or “Operator”.

8. Defendant, Jose J. Montes, LE, is the owner of the commercial real property identified as Folio: 30-4011-011-0170, with post address of 7044 SW 8th Street, Miami, Florida 33144, which is built out as the Herc Rentals 9910–West Miami, FL, the subject of this action, and referred hereto as “Montes LE”, or “Owner.”.

9. Defendant, Jose J. Montes, is the Trustee of Jose J. Montes LE, and a person subject to the ADA. At all times pertinent Jose J. Montes personally acted on behalf of “Montes LE”.

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FACTS

10. Defendant, “Herc Rentals”, is the owner and operator of the “Herc Rentals 9910–West Miami”, located at 7044 SW 8th Street, Miami, Florida 33144, which is open to the general public. As such, a Place of Public Accommodation subject to the requirements of Title III of the ADA and it’s implementing regulation as defined by 42 U.S.C. §12181(7), §12182, and 28 C.F.R. §36.104.

11. At all times material hereto, Defendant, “Montes LE”, has leased its commercial property to Defendant, “Herc Rentals”, who in turn has operated (and continues to operate) its branch “Herc Rentals 9910–West Miami” within that leased space.

12. As the owner/operator of a store, which is open to the public, Defendant, “Herc Rentals”, is defined as a “Public Accommodation” within meaning of Title III because it is a private entity which owns, or operates a store; 42 U.S.C. §12182, §12181(7) and 28 C.F.R. §36.104.

13. On June 2, 2024, Plaintiff personally visited the “Herc Rentals 9910–West Miami”, to inquire and/or use of their services, and to test for compliance with the ADA/ADAAG, but because he perambulates with the assistance of a wheelchair, Plaintiff was denied full and equal access, and enjoyment of the facilities, services, goods, and amenities, because of the architectural barriers met at the Subject Property

14. Based on the access impediments Plaintiff encountered, Plaintiff has been denied full and equal access by the operator Defendant, “Herc Rentals”, and by the owner of the commercial property, Defendant, “Montes LE”, which house the “Herc Rentals 9910–West Miami”.

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15. As the owner and operator of “Herc Rentals 9910–West Miami”. Defendant, “Herc Rentals”, is aware of the ADA and the need to provide for equal access to all areas of its facilities. Therefore, its failure to reasonably accommodate mobility impaired and disabled patrons by ensuring that its facility is fully accessible is/was willful, malicious, and oppressive and in complete disregard for the Civil Rights of the Plaintiff and in violation of 28 C.F.R. §36.302.

16. As the owner of commercial property which built out and utilized as store an establishment that provides goods/services to the general public, Defendant, “Montes LE”, is also defined as a “Public Accommodation” within meaning of Title III; 42 U.S.C. §12182, §12181(7) and 28 C.F.R. §36.104.

17. As the owner of commercial property, which is built as public accommodation, Defendant, “Montes LE”, is aware of the ADA and the need to provide for equal access in all areas of its commercial property which are open to the public. Failure to reasonably accommodate mobility impaired and disabled patrons by ensuring that its property is fully accessible is/was willful, malicious, and oppressive and in complete disregard for the Civil Rights of the Plaintiff and in violation of 28 C.F.R. §36.302.

18. As a result of the joint and several discriminations by Defendants, Plaintiff has suffered loss of dignity, mental anguish and other tangible injuries and has suffered an injury-in-fact.

19. Plaintiff continues to desire to patronize and/or test the “Herc Rentals 9910–West Miami” operated by “Herc Rentals” and located at the commercial property owned by “Montes LE”, but continues to be injured, in that he continues to be discriminated against due to the barriers to access within that restaurant which are in violation of the ADA.

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20. Any and all requisite notice has been provided.

21. Plaintiff has been obligated to retain the civil rights law office of J. Courtney Cunningham, PLLC and has agreed to pay a reasonable fee for services in the prosecution of this cause, including costs and expenses incurred. Plaintiff is entitled to recover those attorney's fees, costs and expenses from Defendants pursuant to 42 U.S.C. §12205.

COUNT I – VIOLATIONS OF TITLE III OF THE ADA

22. The ADA was enacted and effective as of July 26, 1990, and ADA legislation has been protecting disabled persons from discrimination due to disabilities since that time. Over 30 years have passed since enactment of the ADA, public accommodations and places of public accommodation have had adequate time for compliance.

23. Congress explicitly stated that the purpose of the ADA was to:

- (i) provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;
- (ii) provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities; and,
- (iii) invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced on a daily by people with disabilities.

42 U.S.C. §12101(b)(1)(2) and (4).

24. Prior to the filing of this lawsuit, Plaintiff personally visited the "Herc Rentals 9910-West Miami" with the intention to use of their services, and/or test the public accommodation for compliance with the ADA/ADAAG; however, Plaintiff was denied adequate accommodation because, as a disabled individual who utilizes a wheelchair for mobility, Plaintiff met barriers to access. Therefore, Plaintiff has suffered an injury in fact.

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25. Defendant, “Herc Rentals” and Defendant, “Montes LE”, have discriminated (and continue to discriminate) against Plaintiff by denying full and equal access to, and full and equal enjoyment of, goods, services, facilities, privileges, advantages and accommodations at the Subject Property in derogation of 42 U.S.C. §12101 *et seq.* and as prohibited by 42 U.S.C. §12182 *et seq.*, by failing to remove barriers to access pursuant to 42 U.S.C. §12182(b)(2)(a)(iv), where such removal is readily achievable.

26. Plaintiff has been unable to, and continues to be unable to, enjoy full and equal safe access to, and the benefits of, all the accommodations and services offered at “Herc Rentals 9910–West Miami”.

27. Defendants are jointly and singularly governed by the ADA and must comply therewith. However, Defendants have discriminated against disabled patrons in derogation of 28 C.F.R. Part 36.

28. Pursuant to the mandates of 42 U.S.C. §12134(a), on July 26, 1991 (as amended), the Department of Justice, Office of the Attorney General, promulgated Federal Regulations to implement the requirements of the ADA, known as the Americans with Disabilities Act Accessibility Guidelines (hereinafter “ADAAG”), 28 C.F.R. Part 36, under which said Department may obtain civil penalties of up to \$75,000 for the first violation and \$150,000 for any subsequent violation.

29. Defendant, “Montes LE”, owner of the commercial property, which houses Defendant, “Herc Rentals 9910–West Miami”, is in violation of 42 U.S.C. §12181 *et seq.*, the ADA and 28 C.F.R. §36.302 *et seq.*, and all Defendants, Defendant, “Herc Rentals” (operator) and Defendant, “Montes LE” (owner of the commercial property) (jointly and

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severally), are discriminating against the Plaintiff as a result of *inter alia*, the following specific violations:

Parking Lot & Accessible Route

- i. The plaintiff had difficulty exiting the vehicle, as designated accessible parking space access aisles are located on an excessive slope. Violation: Some of the accessible parking space access aisles are located on a non-compliant slope violating Section 4.6.3 of the ADAAG and Section 502.4 of the 2010 ADA Standards, whose resolution is readily achievable.
- ii. The plaintiff had difficulty exiting the vehicle, as the designated accessible parking space is located on an excessive slope. Violation: Some of the accessible parking spaces are located on a non-compliant slope in violation of Section 4.6.3 of the ADAAG and Section 502.4 of the 2010 ADA Standards, whose resolution is readily achievable.
- iii. The access aisle is not marked as per local laws or regulations. The spaces between blue and white. Advisory 502.3.3 Marking. The method and color of marking are not specified by these requirements but may be addressed by State or local laws or regulations. As per the FBC Fig. 9, FDOT Index # 17346, the space between the blue and white line is 2" and the access aisle is measured from the centerline of the white lines.
- iv. There are accessible parking spaces and access aisles with faded striping that makes it impossible to differentiate the boundaries. The facility fails to maintain the accessible elements that area required to be readily accessible and usable by persons with disabilities, violating sections 4.6.3, 36.211 of the ADAAG and Sections 502.3, 36.211, whose resolution is readily achievable.
- v. The parking facility does not provide compliant directional and informational signage to a compliant accessible parking space violating Section 4.6.4 of the ADAAG and Section 216.5 of the 2010 ADA Standards, whose resolution is readily achievable.

WHEREFORE, Plaintiff, Jesus Gonzalez hereby demands judgment against Defendant, Herc Rentals, Inc, (lessee of the commercial property and operator of the Herc Rentals 9910-West Miami, located therein), and Defendant, Jose J. Montes, LE (owner of the commercial property) and requests the following injunctive and declaratory relief: The Court declare that Defendants have violated the ADA;

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- a) The Court enter an Order directing Defendants to evaluate and neutralize their policies, practices and procedures toward persons with disabilities,
- b) The Court enter an Order requiring Defendants to alter the commercial property and the establishment located therein such that it becomes accessible to and usable by individuals with disabilities to the full extent required by the Title III of the ADA;
- d) The Court award reasonable costs and attorney's fees; and
- e) The Court award any and all other relief that may be necessary and appropriate.

Respectfully submitted this June 14, 2024.

By: /s/ Juan Courtney Cunningham
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